IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5830 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RATIBHAI JOSHI

Versus

NAVNITLAL D PARIKH

Appearance:

1. Special Civil Application No. 5830 of 1988

NOTICE SERVED for Petitioner No. 1

RULE SERVED for Respondent No. 1,17

MR PANDYA AGP for Respondent No. 2

MR PARTHIV SHETH for MR SV RAJU for Respondent No. 3-16

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 11/12/2002

ORAL JUDGEMENT

#. Administrative Officer of Gomtipur Kelvani Mandli Trust, Ahmedabad initially filed this petition through his learned counsel Shri M.A.Panchal. On the death of Mr.Panchal, the petitioner was served with the notice to make alternative arrangement in this matter on his behalf. But after service of that petition the petitioner has not thought it fit to make any alternative arrangement to appear in this matter on his behalf. Hence, this petition is disposed of by this order after hearing Shri Parthiv Sheth for Shri S.V.Raju for respondent Nos.3 to 16 and learned AGP, Shri Pandya for the respondent No.2-State of Gujarat.

#. From the averments made in this petition, it appears that respondent Nos.3 to 17 had filed application No.44/87 before the Primary Education Tribunal, Ahmedabad which was entertained by the learned Tribunal on 17.9.1987 and some interim orders were also passed by the Tribunal to the effect that it has jurisdiction to entertain that application. From the averments made in this petition, it also appears that earlier the petitioner had filed writ petition i.e. Special Civil Application No.2984/88 before this court, which came to be disposed of by common judgment and order dated 8.7.1988 passed by the learned Single Judge of this court (Annexure-D). From the bare reading of the order dated 8.7.1988 at Annexure-D passed by the learned Single Judge of this court it appears that it was a consent order. It also appears from the averments made in para 14 of this petition that later on the petitioner had filed Civil Application in Special Civil Application No.2984/88 for review of the order and recalling the same. No further details are given to what happened to that Civil Application for review filed in Special Civil Application No.2984/88. Be that as it may.

#. It seems that without waiting for the result of that review petition the petitioner has filed this petition challenging the jurisdiction of the Tribunal and the orders dated 17.9.1987 passed by it in Application No.44/87 without placing the same on the record of this case.

#. Once, earlier petition is disposed of by the Co-ordinate Bench of this court, no second petition would lie on the same subject, therefore, only on this ground this petition was required to be dismissed. It is true that consent of the learned counsel for the parties would not confer any power to the authority which had no jurisdiction to decide the matter. However, if according to the petitioner the learned Single Judge committed

error in passing the order dated 8.7.1988 Annexure-D with consent of the learned counsel for the parties, then the petitioner should have challenged the same in appeal before the Division Bench of this court but it can never be questioned again in fresh writ petition under Article 226 of the Constitution of India before Co-ordinate Bench.

#. The petitioner has challenged the impugned order dated 17.9.1987 passed by the learned Tribunal in application No.44/87, without placing the same on the record of the case. In my considered opinion, legality and validity of the impugned order can only be considered if the same is produced on record, otherwise not. In the instant case, without placing the copy of the impugned order passed by the learned Tribunal on 17.9.1987, the petitioner has tried to challenge the same in writ petition under Article 226 of the Constitution of India, therefore, on this ground alone this petition was required to be dismissed.

In view of the above discussion, this petition fails and is dismissed with no order as to costs. Rule discharged. Ad interim relief granted earlier stands vacated forthwith.

(B.J.Shethna, J.)
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